

that the vasectomy had been successful and guaranteed sterility. Some time following the operation, however, the plaintiff's wife became pregnant and plaintiff, because of his wife's condition of health which would render childbirth dangerous, experienced anxiety and was subjected to considerable expense before and after the birth of the child. The Court, in rendering a decision in favor of the defendant physician, stated that there was nothing immoral about such an operation since most states permit the same upon the female to protect her life, and that there is no reason why the husband should not be permitted to submit to a vasectomy to protect his wife since there is much less danger involved in that operation than in a salpingectomy. The Court stated that the argument that the husband might later marry some other woman and be incapable of progeny is not sufficient to render the operation immoral. The Court stated:

Therefore, in our opinion, it was entirely justifiable for them to take the simpler and less dangerous alternative and have the husband sterilized. Such an operation does not impair, but frequently improves, the health and vigor of the patient. Except for his inability to have children, he is in every respect as capable physically and mentally as before. It does not render the patient impotent or unable "to fight for the king" as was the case in *mayhem* or maiming. *Liability of Physicians for Sterilization Operations*, Am. Bar Assn. Jour., Vol. 16 (1930), p. 158. See *Smith vs. Wayne Probate Judge*, 231 Mich. 409, 417, 204 N. W. 140, 142, 143. We, therefore, hold that under the circumstances of this case the contract to perform sterilization was not void as against public policy, nor was the performance of the operation illegal on that account.

(To be concluded.)

## LETTERS†

### Concerning Malpractice Liability Through Volunteer Nurses' Aides:

EMERGENCY MEDICAL SERVICE  
411 Phelan Building, 760 Market Street  
San Francisco 2, California

November 29, 1944.

Mr. Wm. Yount, Deputy Director,  
Southern Area, California State War Council,  
Room 627, State Building,  
Los Angeles, California.

Dear Mr. Yount:

Enclosed is a copy of an opinion voluntarily rendered to me by Hartley F. Peart, Esquire, General Counsel, California Medical Association, on the liability of Volunteer Nurses' Aides to suits for malpractice.

Dr. Halverson has signed a letter requesting an opinion on the same question of the State Attorney General.

When information from the Attorney General has been received here, I shall forward a copy of it to you.

Sincerely,

(Signed) MORTON R. GIBBONS, M.D.,  
Chief, Emergency Medical Service.

San Francisco 4, November 25, 1944.

California State War Council,  
Emergency Medical Service, addressed.

Attention: Morton R. Gibbons, M.D., Chief, Emergency Medical Service.

Dear Doctor:

I have examined your letter of November 24, with en-

closed copy of Dr. Halverson's request to the Attorney General for an opinion.

I believe that volunteer nurses' aides could be subjected to liability in a malpractice action, even though their services are purely voluntary and gratuitous. In so far as the voluntary aspect of their services is concerned, they would be in the same position as a physician donating his services to county hospitals or charitable institutions. Such a physician is subject to malpractice actions to the same extent as a private physician offering his services for a fee.

The fact that a nurses' aide does not have the same training and experience that a registered nurse has would undoubtedly lower the standard of care which she would be required to fulfill. In my opinion, however, it would be possible to hold a nurses' aide liable for damages resulting from a departure by her from the standard of care normally exercised by other nurses' aides or persons having similar training and qualifications in the community. Of course, a nurses' aide would not be held to the same standard of care as a registered nurse, and if she acted under direct instructions from a registered nurse or a licensed physician, I do not believe that any court would hold her responsible for the results of her actions.

I know of no provision in the War Powers Act or the War Civilian Security Program to meet this danger.

Yours very truly,

(Signed) HARTLEY F. PEART.

### Concerning Literature to Military Camps:

STATION HOSPITAL  
OFFICE OF THE SURGEON  
MUROC ARMY AIR FIELD  
Muroc, California

My dear Doctor:

Your recent letter offering to send medical literature to this station has been read with unusual interest and has been posted on the bulletin board for the information of all Medical Officers on duty here.

Your periodicals will be a valuable addition to the professional library of this hospital.

Please convey our grateful appreciation to the members of your Association.

Most sincerely,

(Signed) ROGER S. THOMPSON,  
Lt. Colonel, MC,  
Surgeon.

\* \* \*

ARMY SERVICE FORCES  
NINTH SERVICE COMMAND  
Headquarters Camp Beale, California

Dear Dr. Kress:

This letter will acknowledge the receipt of the medical journals and books which were sent to this hospital recently by the C.M.A. Postgraduate Committee.

We appreciate your effort in sending this material to us and feel sure that the medical officers in the different Commands will profit by the receipt of this literature.

We have a fairly complete library at this hospital so far as current medical journals are concerned. However, we are short of medical books, particularly on diseases of women. Now that we have the WACs with us, we find that our problems along this line are increasing and reference books dealing with gynecological problems would be very acceptable.

Thanking you for your interest, I am,

Fraternally yours,

(Signed) OLIN PAUL,  
Major, MC,  
Chief of Medical Branch.

† CALIFORNIA AND WESTERN MEDICINE does not hold itself responsible for views expressed in articles or letters when signed by the author.